



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 279 OF 2019

(Before Hon. Lady Justice Hellen S. Wasilwa on 8th October, 2019)

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

CROM IMPEX (K) LIMITED.....RESPONDENT

RULING

1. Before this Court is the Claimant's Application dated 25th April 2019 seeking the following orders:-

a. Spent.

b. Spent.

c. THAT interim orders be issued against the Respondent to comply with section 48 of the Labour Relations Act 2007 by way of deducting and remittance of union dues till the hearing and determination of this suit.

d. THAT the Honourable Court deem fit to issue interim orders against the Respondent from victimizing the Applicant members on ground of trade union activities/affiliation and/or pending the hearing and determination of this suit.

e. THAT the Honourable Court do allow the parties to proceed by way of written submission to dispose of the main suit.

2. The Application is based on the grounds set therein as well as the Supporting Affidavit of Mr. Wycliffe A. Nyamwatta sworn on 25th April 2019. They aver that the Respondent is in breach of Sections 48 and 54 of the Labour Relations Act 2007. Further, that the Applicant recruited 7 of the Respondent's employees in 2018 December and the check-offs were duly signed and forwarded to the Respondent who refused to deduct and remit union dues. This forced the Applicant to invoke Section 62 of the Act.

3. The Applicant avers that the Respondent has refused to sign a recognition agreement and has started to victimize its members by threatening them with suspension and termination. As such, there is a likelihood that the Applicant will lose its members' confidence in its ability of representation.

4. The Respondent opposed the Application vide the Replying Affidavit of Hussein Zein sworn on 6th June 2019, contending that the Applicant is non-suited as she has no recognition agreement exists between them.

5. Further, that some of the listed persons in the Statement of Claim are not employees of the Respondent with some of them having left employment with the Respondent. They are Collins Maruti, Patson Wekesa and Maryanne Njoki. Consequently, the Applicant only has 4 members out of the Respondent's over 20 employees hence does not meet the legal threshold of a simple majority of unionizable employees to warrant the execution of a recognition agreement. As such, there is no legal basis for the Applicant to claim deduction of union dues. The Respondent denies harassing or victimizing its employees.

Submissions by the Parties

6. The Application was dispensed with by way of written submissions where only the Respondent filed their written submissions. They submit that the Application should be dismissed because the Applicant lacks the *locus standi* as there is no recognition agreement between them. They rely on the cases of **Kenya Union of Employees of Voluntary and Charitable Organizations vs. Board of Governors &**

Maina Wanjigi Secondary School [2015] eKLR and Communication Workers' Union vs. Safaricom Limited [2014] eKLR where the Court stated as follows:-

“Without recognition agreement by an employer, a trade union, even where registered as such, becomes a bystander waiting by the roadside for instructions. Similar to a lawyer though having a first class honours lacks a certificate of practice as an Advocate of the High Court of Kenya. Such a lawyer though well versed in law and well suited to give legal advice to various citizens lacks the capacity to stand in Court as an advocate representing a client.”

7. It is also the Respondent's submissions that the Applicant lacks the simple majority of unionizable employees for there to be a recognition agreement hence has no merit and should be dismissed. They rely on the cases of Kenya Union of Printing, Paper Manufacturers and Allied Workers vs. Packaging Industries Limited & Another [2014] and Kenya National Union of Nurses vs. County Public Service Board Homabay [2018] eKLR where the Court was of the following opinion:-

“The fact that the Respondent signed the recognition agreement is proof that the Claimant has members among its employees as a recognition agreement is signed after a union attains a simple majority of membership from among the employees of the employer with whom the recognition agreement has been signed.”

8. It is further submitted by the Respondent that it has not been given instructions by its employees to deduct dues from their salaries. There is no evidence of check-offs giving it the authority to deduct union dues from their salaries. They rely on the case of Kenya National Union of Nurses vs. County Public Service Board Homabay [2018] eKLR where the Court had the following finding:-

“The issue whether or not there have been deductions of union dues before, although not proved by the Applicant, is not a determinant of whether or not the Applicant is entitled to such deductions. The fact that the Respondent signed the recognition agreement is proof that the Claimant has members among its employees as a recognition agreement is signed after a union attains a simple majority of membership from among the employees of the employer with whom the recognition agreement has been signed.”

9. I have examined the averments of both Parties. Under Article 41 of the Constitution, any worker has a right to join a trade union of his choice. This right is not dependent upon the union having a recognition agreement with any particular employer. The issue of deductions of union dues is therefore not pegged on recognition by any union by an employer but on membership to a union.

10. Section 48 (2) & (3) of Labour Relations Act states as follows:-

2. “A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to:-

a. deduct trade union dues from the wages of its members; and

b. pay monies so deducted:-

i. into a specified account of the trade union; or

ii. in specified proportions into specified accounts of a trade union and a federation of trade unions.

3. An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.

11. The law is clear that it is the Union to notify the employer of the deductions envisaged in a prescribed form. The Respondent submit that their employees have not authorized them to effect any deductions. This is not what is expected by the law.

12. The Respondents having been served with the check off forms should oblige and effect the necessary deductions, which I order, should be done immediately with effect from the end of October 2019.

13. As for recognition, this is a matter the Applicant should establish through evidence and which this Court will consider in the main claim.

14. Costs of this application to be in the cause.

Dated and delivered in open Court this 8th day of October, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Attela holding brief Makale for Claimant – Present

Khamala holding brief Njuguna for Respondent – Present